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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/628,588 | 07/28/2003 | Jeffrey K. Drogue | 6970.02 | 4659 |

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David E. Bruhn
DORSEY & WHITNEY LLP
Intellectual Property Department
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

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| EXAMINER |
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BOGART, MICHAEL G

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| ART UNIT | PAPER NUMBER |
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3761

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,588

Applicant(s)

DROGUE ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: --Fluid and Bioaerosol Management Vacuum Connector and System--.

Claim Rejections – 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 13 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new matter includes the limitation “located in the same room as”. The closest support the Examiner could find for this was the mention that the invention is intended for use in operating rooms and that the connector is located between a wall connection and the end effective tool. This does not provide specific support for the new limitation such that both the connector and point of use of a vacuum tool are in the same room.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-10, 12-14, 17 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ciavattoni *et al.* (US 3,665,682; hereinafter “Ciavattoni”) in view of Goosen (US 5,019,060).

Ciavattoni teaches vacuum connector (10) located in the same room as the point of use of a vacuum tool (12, 14, 16) and capable of being connected to a vacuum source, the vacuum connector (10) comprising:

an inlet (64);

an outlet (84);

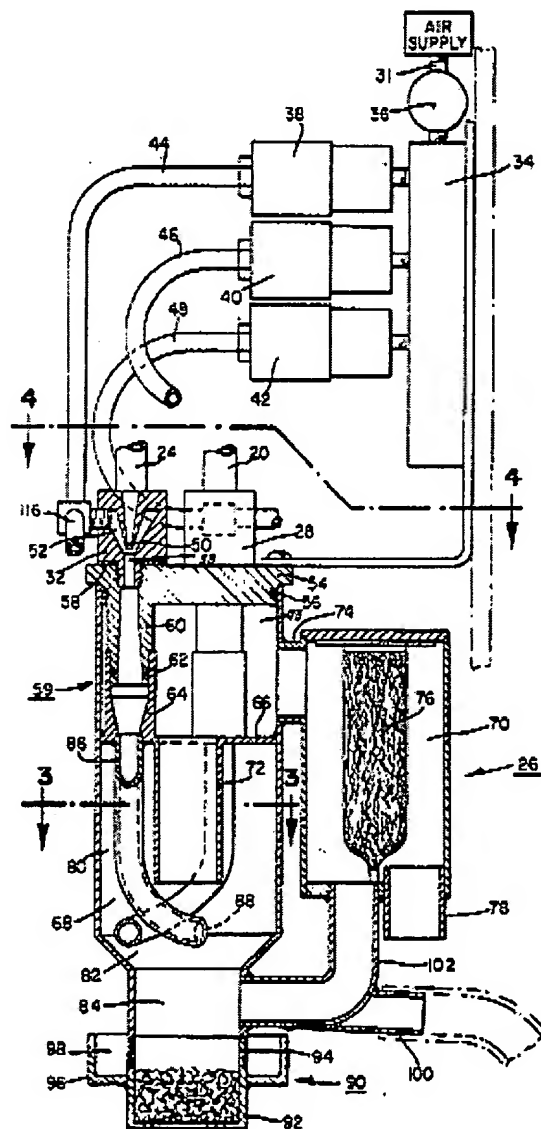
a separation chamber (26) in communication with the inlet (64);

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a baffle (66) operably mounted in said chamber (26) to cooperate with the inlet (64) for optimizing the separation of liquid and gaseous material;

an air pathway (70) in communication with the separation chamber (26) and the outlet (84); and

a fluid pathway (100) separate from the air pathway (70), and in communication with the separation chamber (26) and the outlet (84)(see figure 2, infra).

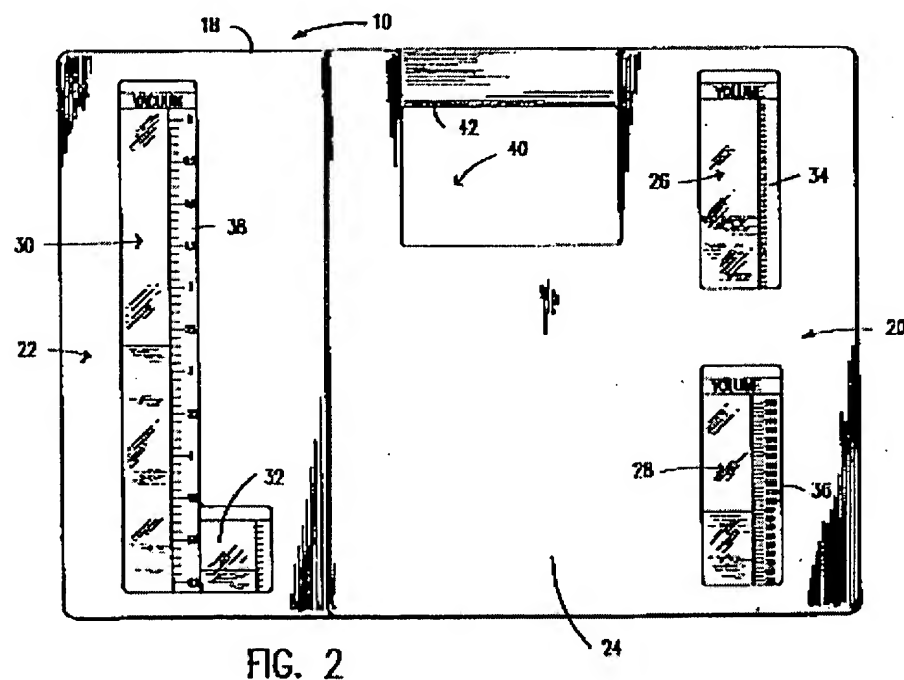


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Regarding claims 1, 2 and 4, Ciavattoni does not expressly teach a measuring device.

Goosen teaches a flow volumetric flow indicator (26)(figure 2, infra).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the flow indicator of Goosen to the evacuation apparatus of Ciavattoni in order to provide a means of monitoring the flow rate of the system.



Regarding claims 10 and 13, Ciavattoni teaches a vacuum source that includes the venturis (28, 30, 32) when air pressure is applied from an upstream source (col. 2, line 69-col. 3, line 25)(figure 5).

Regarding claim 3, Ciavattoni teaches an inlet (30).

Regarding claim 5, Ciavattoni teaches a decontamination unit (70, 76).

Regarding claim 6, Ciavattoni teaches a collection chamber in communication with the separation chamber (26).

Regarding claim 7, Ciavattoni teaches a pressure regulator (36) that effectively regulates the vacuum level that occurs downstream of venturis (28, 30, 32)(col. 2, line 69-col. 3, line 25).

Regarding claims 8 and 14, Ciavattoni in view of Goosen do not expressly disclose a microprocessor-based flow meter.

Merely automating a prior art process is not sufficient to patentably distinguish a claimed invention if no unexpected result can be demonstrated. See *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958) (Appellant argued that claims to a permanent mold casting apparatus for molding trunk pistons were allowable over the prior art because the claimed invention combined "old permanent-mold structures together with a timer and solenoid which automatically actuates the known pressure valve system to release the inner core after a predetermined time has elapsed." The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.). MPEP § 2144.04. In the instant case, applicants have added electronic calculating means to a flow meter, which can automatically calculate flow rates, etc. This is simply an automation step over the manual calculations which may be performed by the combination of Ciavattoni and Goosen.

Regarding claims 9 and 13, Ciavattoni teaches an end effector (12, 14, 16).

Regarding claims 12 and 17, Ciavattoni teaches a filter (76) and decontamination unit (70, 76).

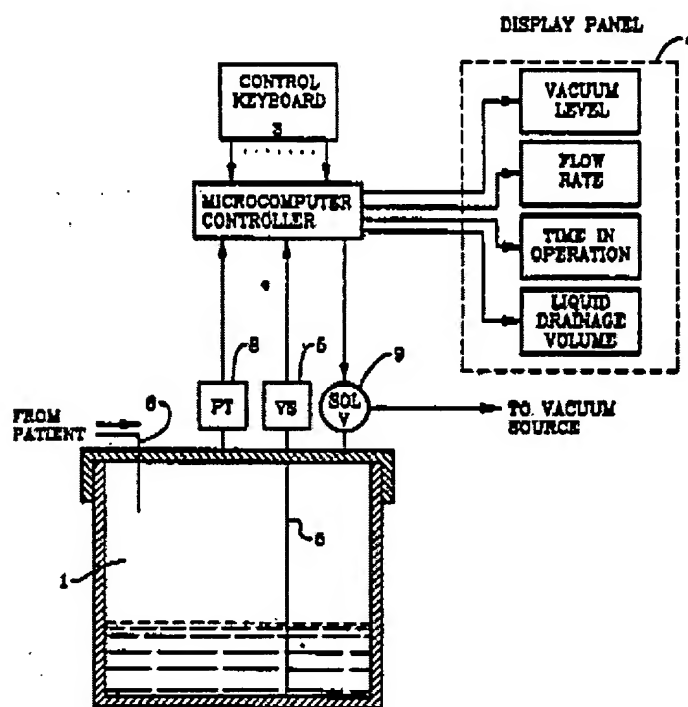
Regarding claim 18, Ciavattoni teaches that the vacuum source includes a centrifugal separator (68)(col. 2, lines 11-33; col. 3, line 11-col. 4, line 7).

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Claims 15 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ciavattoni and Goosen as applied to claims 1-10, 12-14, 17 and 18 above, and further in view of Walker (US 5,195,995 A).

Ciavattoni in view of Goosen do not expressly teach a key pad input device.

Walker teaches a keyboard (3) for controlling a medical suction apparatus (see figure 1, infra).



At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the keyboard of Walker to the evacuation apparatus of Ciavattoni in view of Goosen in order to provide a means of controlling the air pressure and vacuum applied to a patient.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
11 May 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

